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IN THE SUPREME COURT OF THE UNITED STATES

HARRY C. DAVIS, C. J. ROOT and ROY HOLLIS,
Petitioners,

vs.

CITY OF HOMESTEAD, FLORIDA, and
THE UNITED STATES OF AMERICA (Intervenor),
Respondents.

PETITION FOR WRIT OF CERTIORARI, AND SUPPORTING BRIEF

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TO: THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Your Petitioners respectfully show:

Statement of the Case

On May 3, 1939, a year and a half after consummating a planned 75% refunding which was contingent up to that point but became final and effective when that percentage was attained, the City of Homestead filed a petition in the Southern District of Florida under Sections 81-84, Chapter IX, of the National Bankruptcy Act of August 16, 1937, as amended by the Act of June 22, 1938, for the purpose of forcing the same refunding terms upon a minority which had refused to settle on those terms, through the renewed consents or votes of the 75% group of creditors who had so settled previously by separate executed unconditional contracts.

The prior Refunding Contract (R. 20-32) was made a part of the City's petition (R. 1-19), and the 75% provision of the contract (R. 31) was frankly alleged (R. 2-3).

The Refunding Contract was presented to the creditors or October 18, 1937. It proposed, as to creditors who should contract thereunder, that serial bonds be replaced by new bonds to be dated October 1, 1937, at reduced interest, and to mature in thirty years (R. 22); that coupons past due on that date be surrendered for non-negotiable, non-interest bearing, non-maturing certificates payable 25¢ on the dollar (R. 26); that a separate tax be levied to pay interest on new bonds (R. 23), and that excess revenues should be used to purchase and retire new bonds and also old bonds which should continue unrefunded and outstanding (R. 23-24); that a special tax be earmarked as a sinking fund for new bonds (R. 24); and that old bonds and coupons surrendered on exchange by the parties to the Refunding Contract should be destroyed (R. 25).

The 75% goal was reached (R. 2), and thereupon the city performed (R. 3-5). The resolutions carrying the contract into effect were dated November 8, 1937 (R. 32-47), and November 19, 1937 (R. 47-61). The former resolution recited that it was made pursuant to the contract (R. 34), and expressed the "belief" that the non-contracting minority later would refund on the same basis (R. 34); it recited that the refunding was under the Florida General Refunding Act of 1931, which permits a city to refund "any and all bonds, coupons or interest on any such bonds" (R. 34).

Those resolutions directed prompt issuance and exchange of new securities, and cancellation of the old securities (R. 45-46 and 58-59); and each recited that it should become effective immediately because of the necessity for restoring the City's credit (R. 46-47 and 60). The petition showed consummation as to the contracting majority (R. 4-8). The old bonds and coupons surrendered on exchange had been cancelled (R. 5).

On May 1, 1939, the City purported to adopt the terms of that 1937 Refunding Contract as a plan of composition (R. 71-73).

All of the consents supplied and relied upon by the City's Bankruptcy petition were those of holders of the new securities (R. 10-13) who had already settled irrevocably (R. 5-8).

The original contracts on which the majority refunding was consummated in 1937 covered $766,500 of bonds (R. 2), amounting to 78.2% of the total then outstanding. A provision required the City to permit others to refund later, on the same basis, if they should choose to do so (R. 29-30); but the finality of the 75% refunding, as to those who contracted therefor and participated therein, was not contingent upon whether or not any or all of the unrefunded minority should so refund. (See contract at R. 20 and 31, bond resolution Sec. 8 at R. 45 and interest resolution Sec. 14 at R. 59).

Between the time of the 1937 settlement by 78.2% and the time of the suit in 1939, holders of an additional $59,000 of bonds settled with the City on the same basis, raising the percentage of prior settlements to 84%.

These Petitioners, holding substantial amounts of unrefunded securities (R. 61-63), moved the District Court to dismiss the proceeding, contending (R. 86-89, 95-96) that the matter presented was beyond the scope of the Bankruptcy Composition Act invoked, which, if construed to apply to the facts at hand, violated the Fifth and Tenth Amendments to the Constitution; and jurisdiction was attacked for want of required consents of creditors holding securities affected by the plan, as defined in the Act.

The United States intervened (R. 115, 116). After a hearing on notice the District Court denied the legal objections and motions to dismiss (R. 117-118). These petitioners appealed (11 U. S. C. A. § 47 (a)), and jointly submitted their objections to the Circuit Court of Appeals for the Fifth Circuit (R. 123-124), which affirmed (R. 130-132). Rehearing (R. 133-151) was denied on July 8, 1940 (R. 152).

Reasons Relied on for the Allowance of the Writ

1. Conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Luehrmann v. Drainage Dist. No. 7 of Poinsett County, Ark.*, 8 Cir., 104 F. (2d) 696, 700, 701, decided June 13, 1939, on the matter of the right to vote in a composition under this Act, of a creditor who has already settled, being determined by whether or not the creditor has retained his original status, by conditioning his action upon ultimate 100% refunding.

2. The Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions.

The question here referred to is whether or not an executed partial refunding is legally final and irrevocable as to those so participating.

Reasons as to the importance of the question, and the Florida decisions affected are shown in Point II of the Argument in the supporting brief.

3. The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this Court:

(a) By holding that the Municipal Bankruptcy Composition Act of August 16, 1937, as supplemented by the addition of sub-section (j) to § 83, by the Act of June 22, 1938, was intended to extend to the situation presented.

(b) By holding that application of the Act to proceedings beyond the established scope of bankruptcy compositions does not transgress the limits of the existing legislation under the Bankruptcy power.

(c) Importance of the questions results not alone from their nature, but because they relate to a law of general application throughout the country; also, the situation presented is typical of many. In Florida alone numerous cities, coun-

ties and other taxing units have refunded irrevocably as to a majority, but not as to all creditors. A number of other such cases are now pending. A recent amendment to the Act (H. R. 9139, approved June 28, 1940), making it applicable to counties, will tend to multiply the instances in which this situation will be presented in the lower courts.

4. The Circuit Court of Appeals has decided a federal question in a way probably in conflict of the decision of this Court in *United States v. Bekins*, 304 U. S. 27, by holding that the Act is not restricted to compositions in bankruptcy.

WHEREFORE your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket "No. 9393, Harry C. Davis, et al., Appellants, v. City of Homestead, Florida, et al., Appellees," and that the said decree of the Circuit Court of Appeals may be reversed by this Honorable Court, and that Petitioners may have such other and further relief as to this Court may seem proper.

Dated August 10, 1940.

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